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No. \_\_\_\_\_

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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SIERRA CLUB, CENTER FOR BIOLOGICAL DIVERSITY, WEST VIRGINIA  
RIVERS COALITION, WEST VIRGINIA HIGHLANDS CONSERVANCY,  
INDIAN CREEK WATERSHED ASSOCIATION, APPALACHIAN VOICES,  
and CHESAPEAKE CLIMATE ACTION NETWORK,  
*Petitioners*

v.

UNITED STATES ARMY CORPS OF ENGINEERS; RYAN D. MCARTHY, in  
his official capacity as Secretary of the U.S. Army; LIEUTENANT GENERAL  
SCOTT A. SPELLMON, in his official capacity as U.S. Army Chief of Engineers  
and Commanding General of the U.S. Army Corps of Engineers; MAJOR  
GENERAL ROBERT F. WHITTLE JR., in his official capacity as Division  
Commander of the U.S. Army Corps of Engineers, Great Lakes and Ohio River  
Division; COLONEL JASON A. EVERS, in his official capacity as District  
Commander of the U.S. Army Corps of Engineers, Huntington District, and  
THERESA SPAGNA, in her official capacity as Chief, Regulatory North Branch,  
U.S. Army Corps of Engineers, Huntington District  
*Respondents*

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**PETITION FOR REVIEW**

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Derek O. Teaney  
APPALACHIAN MOUNTAIN ADVOCATES. INC.  
P.O. Box 507  
Lewisburg, WV 24901  
Telephone: (304) 646-1182  
Email: dteaney@appalmad.org  
*Counsel for Petitioners*

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Pursuant to Section 19(d)(1) of the Natural Gas Act, 15 U.S.C. § 717r(d)(1), and Rule 15(a) of the Federal Rules of Appellate Procedure, SIERRA CLUB, CENTER FOR BIOLOGICAL DIVERSITY, WEST VIRGINIA RIVERS COALITION, WEST VIRGINIA HIGHLANDS CONSERVANCY, INDIAN CREEK WATERSHED ASSOCIATION, APPALACHIAN VOICES, and CHESAPEAKE CLIMATE ACTION NETWORK hereby petition the United States Court of Appeals for the Fourth Circuit for review of the September 25, 2020 issuance by the Huntington District of the United States Army Corps of Engineers of a verification under Nationwide Permit Number 12 for the discharge of dredged and/or fill material to Mountain Valley Pipeline, LLC (United States Army Corps of Engineers File Number LRH-2015-582-GBR) (hereinafter, “NWP 12 Verification”). In accordance with Local Rule 15(b), a copy of the NWP 12 Verification is attached hereto as Exhibit A.

The agency order of which review is sought through this Petition is related to the agency order at issue in a separate petition for review that certain Petitioners are filing simultaneously with this Petition. The related petition seeks review of an action by the Norfolk District of the United States Army Corps of Engineers reinstating Mountain Valley Pipeline, LLC’s verification under Nationwide Permit 12 for the discharge of dredged and/or fill material in the Commonwealth of Virginia.

In accordance with Rule 15(c) of the Federal Rules of Civil Procedures, parties that may have been admitted to participate in the underlying proceeding have been served with a copy of this Petition. Pursuant to Local Rule 15(b), attached hereto is a list of Respondents specifically identifying the Respondents' names and addresses.

Respectfully submitted,

**/s/ Derek O. Teaney**

DEREK O. TEANEY (W. Va. Bar No. 10223)

APPALACHIAN MOUNTAIN ADVOCATES, INC.

P.O. Box 507

Lewisburg, WV 24901

Telephone: (304) 646-1182

Email: [dteaney@appalmad.org](mailto:dteaney@appalmad.org)

Dated September 28, 2020     *Counsel for Petitioners*

## CERTIFICATE OF SERVICE

In accordance with Federal Rule of Appellate Procedure 15(c)(1) & (2), the undersigned hereby certifies that, on September 28, 2020, a true copy of this Petition for Review was served via first-class mail on each of the following entities that may have been admitted to participate in the agency proceedings:

1. Robert Cooper  
Mountain Valley Pipeline, LLC  
2200 Energy Drive  
Canonsburg, PA 15317
  
2. CT Corporation System  
Registered Agent for Mountain Valley Pipeline, LLC  
5400 D Big Tyler Road  
Charleston, WV 25313

DATED: September 25, 2020    /s/ **Derek O. Teaney**  
DEREK O. TEANEY (W. Va. Bar No. 10223)  
APPALACHIAN MOUNTAIN ADVOCATES, INC.  
P.O. Box 507  
Lewisburg, WV 24901  
Telephone: (304) 646-1182  
Email:        dteaney@appalmad.org

*Counsel for Petitioners*

## LIST OF RESPONDENTS

Pursuant to Local Rule 15(b), Petitioners hereby provide a list of Respondents specifically identifying the Respondents' names and the addresses where Respondents may be served with copies of the Petition:

United States Army Corps of Engineers  
441 G Street NW  
Washington, DC 20314

Ryan D. McCarthy  
Secretary, United States Army  
101 Army Pentagon  
Washington, DC 20310-0101

Lt. General Scott A. Spellmon  
Commanding General and Chief of Engineers  
United States Army Corps of Engineers  
441 G Street NW  
Washington, DC 20314

Maj. General Robert F. Whittle Jr.  
Division Commander  
United States Army Corps of Engineers  
Great Lakes and Ohio River Division  
550 Main Street, Room 10524  
Cincinnati, OH 45202-3222

Col. Jason A. Evers  
District Commander  
United States Army Corps of Engineers  
Huntington District  
502 Eighth Street  
Huntington, WV 25701

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Theresa Spagna  
Chief, North Branch  
United States Army Corps of Engineers  
Huntington District  
502 Eighth Street  
Huntington, WV 25701



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
HUNTINGTON DISTRICT, CORPS OF ENGINEERS  
502 EIGHTH STREET  
HUNTINGTON, WEST VIRGINIA 25701-2070

September 25, 2020

Regulatory Division  
Energy Resource Branch  
LRH-2015-00592-GBR

**PRELIMINARY JURISDICTIONAL DETERMINATIONS AND  
NATIONWIDE PERMIT NO. 12 VERIFICATIONS**

Mr. Robert Cooper  
Mountain Valley Pipeline, LLC  
2200 Energy Drive  
Canonsburg, Pennsylvania 15317

Dear Mr. Cooper:

I refer to the Mountain Valley Pipeline, LLC's Pre-Construction Notification (PCN) received on January 28, 2020, and additional information received March 18, 2020, requesting a Department of the Army (DA) authorization to discharge dredged and/or fill material into waters of the United States in association with the Mountain Valley Pipeline (MVP) project. The proposed project will involve the construction of a 303-mile 42-inch natural gas pipeline in Virginia and West Virginia. The MVP project will cross the United States Army Corps of Engineers (Corps) Pittsburgh, Norfolk and Huntington District's regulatory boundaries. Approximately 164 miles of the proposed pipeline, approximately 137.5 miles of proposed access roads, and three (3) compressor stations are located within the Huntington District's area of responsibility (AOR). The PCN has been assigned the following file number: LRH-2015-592-GBR. Please reference this number on all future correspondence related to this proposed project.

The Corps' authority to regulate waters of the United States is based on the definitions and limits of jurisdiction contained in 33 CFR 328 and 33 CFR 329. Section 404 of the Clean Water Act (Section 404) requires a DA permit be obtained prior to discharging dredged and/or fill material into waters of the United States, including wetlands. Section 10 of the Rivers and Harbors Act of 1899 (Section 10) requires a DA permit be obtained for any work in, on, over or under a navigable water.

*Preliminary Jurisdictional Determination*

You have requested a preliminary jurisdictional determination (PJD) in accordance with the Corps' Regulatory Guidance Letter (RGL) for Jurisdictional Determinations issued by the Corps on October 31, 2017 (RGL No. 16-01). The PJD boundary contains approximately 64,008 linear feet (lf) (14.38 acres) of 702 streams, and 22.91 acres of 445 wetlands. Refer to the enclosed *Preliminary Jurisdictional Determination Form*, dated September 15, 2020, for a detailed summary of potentially jurisdictional waters on-site. This office has determined the aforementioned waters **may** be jurisdictional waters of the United States in accordance with the

RGL No. 16-01. As indicated in the guidance, this PJD is non-binding and cannot be appealed (33 CFR 331.2) and only provides a written indication that waters of the United States, including wetlands, may be present on-site.

You have declined to exercise the option to obtain an approved jurisdictional determination (AJD) at this time for the aforementioned aquatic resources within the PJD boundary. For the purposes of the determination of impacts, compensatory mitigation, and other resource protection measures for activities that require authorization from this office, the aquatic resources described in the enclosed PJD form will be evaluated as if they are waters of the United States.

Enclosed please find two (2) copies of the PJD form. If you agree with the findings of this PJD and understand your options regarding the same, please sign and date one (1) copy of the PJD form and return it to this office within 30 days of receipt of this letter. You should submit the signed copy to the following address:

Mr. Adam Fannin (LRH-2015-592-GBR)  
U.S. Army Corps of Engineers, Huntington District  
Attn: Energy Resource Branch  
502 8th Street  
Huntington, West Virginia 25701

#### *Nationwide Permit 12*

The proposed projects, as described in the submitted DA permit application, have been reviewed in accordance with Section 404 and Section 10. Based on your description of the proposed work, and other information available to us, it has been determined that the projects would involve activities subject to the requirements of Section 404 and/or Section 10.

In the submitted information, you have requested authorization for the proposed temporary discharge of dredged and/or fill material into 30,522 linear feet (9.30 acres) of stream(s) and 11.01 acres of wetlands and the proposed permanent discharge of dredged and/or fill material into 1,016 linear feet (0.192 acre) of stream(s) and 0.523 acre of wetlands, at 451 separate and distant locations. Seven (7) of these single and complete projects involve work in or under navigable waters of the United States subject to Section 10. Three (3) of these single and complete projects involve the installation of structures under the Section 10 waters and four (4) of these single and complete projects involve the use of temporary water withdrawals. Water withdrawals are not regulated under Section 404. Additionally, the MVP will result in the permanent conversion of 1.89 acres of scrub-shrub and forested wetlands to emergent wetlands. Your PCN describes 451 single and complete crossings in the portion of the proposed project located within the Huntington District's AOR, as shown on the enclosed table titled *Single and*



*Complete Crossings USACE Huntington District Mountain Valley Pipeline Project* (updated March 18, 2020) and otherwise described in your PCN.

Based on the provided information, it has been determined each single and complete project meets the criteria for Nationwide Permit (NWP) No. 12 under the January 6, 2017, Federal Register, Issuance and Reissuance of NWPs (82 FR 1860) provided you comply with all terms and conditions of the enclosed material, and the enclosed special conditions. A copy of this NWP can be found on our website at <http://www.lrh.usace.army.mil/Missions/Regulatory.aspx>. The West Virginia Department of Environmental Protection has issued a General 401 Water Quality Certification for this NWP. The NWP verification does not obviate the need to obtain any other required state, local, or Federal authorizations.

This verification is valid until the expiration date of the NWPs, unless the NWP authorization is modified, suspended, or revoked. The verification will remain valid if the NWP authorization is reissued without modification or the activity complies with any subsequent modification of the NWP authorization. All of the existing NWPs are scheduled to be modified, reissued, or revoked on March 18, 2022. Prior to this date, it is not necessary to contact this office for re-verification of your project unless the plans for the proposed activity are modified. Furthermore, if you commence or under contract to commence this activity before March 18, 2022, you will have twelve (12) months from the date of the modification or revocation of the NWP to complete the activity under the present terms and conditions of this NWP.

A copy of the NWP verification, special conditions, the General 401 Water Quality Certification and the submitted construction plans must be kept at the site during construction. The permittee will supply a copy of these documents to their project engineer responsible for construction activities. Upon completion of the work, the enclosed "Activity Completion Certification" must be signed and returned to this office. If you have any questions concerning the above, please contact Mr. Adam Fannin of the Energy Resource Branch at 304-399-6901, by mail at the above address, or by email at: [adam.e.fannin@usace.army.mil](mailto:adam.e.fannin@usace.army.mil).

Sincerely,

**Teresa**  
**Spagna**

Digitally signed  
by Teresa Spagna  
Date: 2020.09.25  
12:08:38 -04'00'

Teresa Spagna  
Chief, North Branch

Enclosures

**Nationwide Permit 12 Verification Special Conditions**  
**Mountain Valley Pipeline, LLC MVP Project**  
**LRH-2015-592-GBR**  
**Page 1 of 3**

1. This verification is contingent upon the information provided by the permittee in their Pre-Construction Notification (PCN), describing the scope and/or impacts of the project, as further depicted in Figures 1-1 – 1-42 titled *Mountain Valley Pipeline USGS Project Location Map USACE Huntington District* and the aquatic resources identified in the enclosed Table 3 titled *Single and Complete Crossings* (dated January 2020 and updated March 18, 2020). Should the project scope and/or impacts change, or new information become available not previously submitted to this office, the permittee must contact this office as soon as practicable to determine whether further federal authorization is necessary.
2. The permittee has proposed to conduct the proposed crossings of the Elk River, the Gauley River, and the Greenbrier River utilizing subterranean installation techniques. These techniques are considered to be environmentally preferable to surface construction within large waterways due to the lack of disturbance to the bottom elevation and substrates of the waters of the United States being crossed. The permittee **is not** authorized to conduct the open trench/cofferdam activities within these waterways. Should the applicant's open trench/cofferdam crossing contingency plan be required to complete the project, the permittee must seek authorization of the new crossing plans from the Corps.
3. Restoration activities shall be conducted in accordance with Section 8.0 of the January 28, 2020, PCN.
4. The permittee will document pre- and post-construction activities through photographs, both upstream and downstream of each channel and each bank. A minimum of four (4) photographs per stream crossing will be taken. For wetland crossings, the permittee will document prior to construction through photographs of the wetland with the Right-of-Way (ROW), the ROW as it enters the wetland, and the ROW as it exits the wetland will be obtained by the permittee. All photographs are to be geo-referenced and identified to correspond with aquatic feature names as described in the Table 3 titled *Single and Complete Crossings* (dated January 2020 and updated March 18, 2020) with a date of the photograph taken and corresponding GPS coordinates. Upon completion of construction and reclamation of each stream and wetland crossing, associated photographs must be taken in the same manner and locations as pre-impact existing conditions with narrative documentation that the area has been returned to pre-construction contours. The narrative documentation shall include a description of the status of vegetative growth in the affected wetlands/stream banks, a description of substrate and grade, and the stability of the affected resources with reference to the prevention of erosion and sedimentation entering receiving waters. The above-described information must be submitted to the Huntington District along with the enclosed "Activity Completion Certification."

**Nationwide Permit 12 Verification Special Conditions  
Mountain Valley Pipeline, LLC MVP Project  
LRH-2015-592-GBR  
Page 2 of 3**

5. Mitigation amounts for unavoidable impacts to waters of the United States were calculated using the West Virginia Stream and Wetland Valuation Metric Version 2.1. The permittee has purchased stream and wetland mitigation credits from multiple federally-approved mitigation bank(s) as indicated on the below Table titled *Table 1 - Required Mitigation within the Huntington District's Regulatory Boundary*. The permittee has submitted confirmation to the Huntington District (Permit Number LRH-2015-592-GBR). The credit purchases remain a requirement of this nationwide permit verification.

<b>Table 1 – Required Mitigation within the Huntington District’s Regulatory Boundary</b>		
<b>Mitigation Bank</b>	<b>Required Purchase of Wetlands Mitigation Bank Credits Prior to Discharge of Dredged and/or fill material</b>	<b>Required Purchase of Stream Mitigation Bank Credits Prior to Discharge of Dredged and/or fill material</b>
Kincheloe Mitigation Bank	0.3832	N/A
Foster Run Mitigation Bank	N/A	124
Spanishburg Mitigation Bank	1.4042	240
Beverly Mitigation Bank	0.6298	N/A
Kincheloe Run Mitigation Bank	N/A	249
<b>Total Mitigation Credits Required</b>	<b>2.4173</b>	<b>613</b>

6. Enclosed is a copy of Nationwide Permit 12 (NWP 12), which contains Specific Regional Conditions a. through e., Water Quality Certification Special Conditions A. through N., and 32 NWP General Conditions – all of which must be complied with for this verification to be valid. A copy of the NWP 12, the NWP 12 verification letter, and the construction plans provided with the January 28, 2020 PCN must be kept at each site during construction. The permittee will supply a copy of these documents to their project engineer responsible for construction activities.

**Nationwide Permit 12 Verification Special Conditions**  
**Mountain Valley Pipeline, LLC MVP Project**  
**LRH-2015-592-GBR**  
**Page 3 of 3**

7. The United States Fish and Wildlife Service (USFWS) Biological Opinion (BO) for the Mountain Valley Pipeline, LLC; Docket Number CP16-10-000; Project #05E2VA00-2016-F-0880 and #05E2WV00-2015-F-0046 BO and dated September 4, 2020, contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with “incidental take” that is also specified in the USFWS BO. The permittee’s authorization under this Corps NWP verification is conditional upon its compliance with the BO, whose terms and conditions are incorporated by reference as being special conditions of the Section 404 and Section 10 NWP 12 verification. Section 7 obligations under Endangered Species Act (ESA) must be reconsidered if new information reveals impacts of the project that may affect federally listed species or critical habitat in a manner not previously considered, the proposed project is subsequently modified to include activities which were not considered during Section 7 consultation with the USFWS, or new species are listed or critical habitat designated that might be affected by the subject project. The USFWS is the appropriate authority to determine compliance with the terms and conditions of its BO, and with the ESA.
  
  8. Temporary water withdrawals are proposed within the Elk River, the Gauley River, and the Greenbrier River which are subject to Section 10 of the Rivers and Harbors Act of 1899. The public’s right to free navigation must not be infringed. Temporary water withdrawals must be adequately marked to advise river users of its presence.
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